

Message

---

**From:** Hough, Palmer [Hough.Palmer@epa.gov]  
**Sent:** 1/19/2021 9:43:14 PM  
**To:** Goodin, John [Goodin.John@epa.gov]; Frazer, Brian [Frazer.Brian@epa.gov]; Kaiser, Russell [Kaiser.Russell@epa.gov]  
**CC:** Ainslie, William [Ainslie.William@epa.gov]; Miller, Clay [Miller.Clay@epa.gov]  
**Subject:** Yazoo Pumps memo to file - January 19, 2021  
**Attachments:** Yazoo 2020 FSEIS\_memo to file\_19Jan2021\_Final.pdf

Folks:

Attached for your records is a final copy of a memo to the file that Bill and I put together regarding the recent review of the Yazoo Pumps project.

The purpose of this memo is to **Ex. 5 Deliberative Process (DP)**

# Ex. 5 Deliberative Process (DP)

Please let me know if you have any questions.

Thanks, Palmer

---

Palmer Hough, Environmental Scientist  
office: 202.566.1374

Office of Wetlands, Oceans, and Watersheds  
U.S. EPA Headquarters (MC 4504T)  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460  
[www.epa.gov/wetlands](http://www.epa.gov/wetlands)

## MEMORANDUM TO FILE

**Subject:** EPA's review of the 2020 Supplemental Environmental Impact Statement for the Yazoo Area Pump Project (CEQ No. 2020205)

**From:** Palmer Hough, Environmental Scientist, Office of Water, EPA Headquarters  
William Ainslie, Wetland Scientist, Wetlands Regulatory Section, EPA Region 4

**Date:** January 19, 2021

---

The purpose of this memo is to document the events that led up to the U.S. Environmental Protection Agency's (EPA) decision not to comment on the 2020 Final Supplemental Environmental Impact Statement for the Yazoo Area Pump Project (2020 FSEIS)<sup>1</sup> and to

### Ex. 5 Deliberative Process (DP)

## Ex. 5 Deliberative Process (DP)

In April 2020, the U.S. Army Corps of Engineers (USACE) Vicksburg District announced its intention to do a second supplement to the Final EIS for the Yazoo Pumps Project issued in 1982. The first supplement was issued in 2007 (2007 FSEIS). In its capacity as a cooperating agency on the new supplement, EPA provided scoping comments to the USACE on June 15, 2020. These comments provided recommendations regarding a number of issue areas including alternatives, wetlands, fish and other aquatic organisms, wildlife, water quality, mitigation, adaptive management, and environmental justice.

On October 16, 2020, the USACE issued a Draft Supplemental Environmental Impact Statement (2020 DSEIS) on the Yazoo Area Pump Project for public comment with a comment deadline of November 30, 2020. EPA career scientists reviewed the 2020 DSEIS, provided several briefings to EPA management and senior leadership, and developed a draft comment letter regarding the 2020 DSEIS. A final draft of this letter was transmitted to EPA management on November 26, 2020 and subsequently provided to EPA senior leadership. This final draft letter identified

## Ex. 5 Deliberative Process (DP)

The final version of EPA's 2020 DSEIS comment letter, which was not vetted by EPA career scientists prior to issuance, included changes made by or directed by EPA senior leadership that resulted in significant inaccuracies and omissions in the 2020 DSEIS comment letter EPA issued

---

<sup>1</sup> The 2020 FSEIS is available at: <https://www.mvk.usace.army.mil/missions/programs-and-project-management/project-management/yazoo-backwater-report/>.

<sup>2</sup> The 2008 Final Determination is available at: [https://www.epa.gov/sites/production/files/2015-05/documents/yazoo-final-determination\\_signed\\_8-31-08.pdf](https://www.epa.gov/sites/production/files/2015-05/documents/yazoo-final-determination_signed_8-31-08.pdf).

on November 30, 2020. Significant concerns with EPA's 2020 DSEIS comment letter include the following:

- 
- **Ex. 5 Deliberative Process (DP)**
- 
- 

EPA career scientists were deeply disturbed by the changes made to the 2020 DSEIS comment letter EPA issued on November 30, 2020. It is important for EPA's comments to accurately reflect EPA's record regarding the Yazoo Pumps Project as well as capture major concerns regarding the recent analysis of this project.

**Ex. 5 Deliberative Process (DP)**

**Ex. 5 Deliberative Process (DP)**

Within a few days of the close of the November 30, 2020 comment period on the 2020 DSEIS, the USACE forwarded its 2020 FSEIS for the proposed project to EPA. Career scientists reviewed the 2020 FSEIS and found that virtually none of the comments that EPA raised in its 2020 DSEIS comment letter had been addressed. This is not surprising since the USACE did not leave itself adequate time to complete a meaningful review of the comments it received on the 2020 DSEIS let alone time to make necessary revisions to the 2020 FSEIS.

The deadline for submitting comments to the USACE on the 2020 FSEIS was January 11, 2021. Based on a careful review of the 2020 FSEIS, EPA career scientists developed a draft comment letter on the 2020 FSEIS stating

**Ex. 5 Deliberative Process (DP)**

**Ex. 5 Deliberative Process (DP)**

**Ex. 5 Deliberative Process (DP)**

The draft letter also clarifies that

**Ex. 5 Deliberative Process (DP)**

**Ex. 5 Deliberative Process (DP)**

In addition, the

draft letter provides comments and recommendations for

**Ex. 5 Deliberative Process (DP)**

These comments and recommendations are provided in Attachment A of this memo.

The 2020 FSEIS comment letter prepared by career scientists also clarifies that

**Ex. 5 Deliberative Process (DP)**

**Ex. 5 Deliberative Process (DP)**

**Ex. 5 Deliberative Process (DP)**

The letter indicates that the current proposal

**Ex. 5 Deliberative Process (DP)**

**Ex. 5 Deliberative Process (DP)**

**Ex. 5 Deliberative Process (DP)**

The letter notes that if the USACE would like to request

EPA consider	Ex. 5 Deliberative Process (DP)
	Ex. 5 Deliberative Process (DP)
The letter also states that	Ex. 5 Deliberative Process (DP)
<h1>Ex. 5 Deliberative Process (DP)</h1>	

On January 6, 2020, EPA career scientists forwarded the 2020 FSEIS comment letter they had prepared to management for sharing with senior leadership. Although senior leadership was advised that no substantive changes were made in the 2020 FSEIS to address the concerns EPA identified in its 2020 DSEIS comment letter, without further discussion or explanation, senior leadership decided not to send a comment letter on the 2020 FSEIS by the January 11, 2021 deadline.

On January 15, 2021, the USACE issued its Record of Decision (ROD) regarding the 2020 FSEIS. None of the issues raised by EPA career scientists were addressed in this three-page ROD.

## **Attachment A**

### **Specific Concerns regarding the 2020 Final Supplemental Environmental Impact Statement for the Yazoo Area Pump Project**

Based on a review of the 2020 Final Supplemental Environmental Impact Statement for the Yazoo Area Pump Project (2020 FSEIS), EPA career scientists identified the following comments and recommendations for the final Clean Water Act (CWA) Section 404(b)(1) Evaluation and Record of Decision (ROD) for the Yazoo Area Pump Project. However, none of these issues were addressed in either the Section 404(b)(1) Evaluation or the ROD issued on January 15, 2021.

#### **I. CWA Section 404(b)(1) Evaluation:**

The CWA Section 404(b)(1) Evaluation specifies whether a proposed project that involves the discharge of dredged or fill material into waters of the United States complies with the CWA Section 404(b)(1) Guidelines (Guidelines).<sup>3</sup> The Guidelines are the substantive environmental criteria used to evaluate proposed discharges of dredged or fill material and consider the potential short-term and long-term effects of a proposed discharge on the physical, chemical, and biological components of the aquatic environment.<sup>4</sup>

##### **A. Section 230.10(a) – Identification of the Least Environmentally Damaging Practicable Alternative**

The Guidelines allow authorization of only the Least Environmentally Damaging Practicable<sup>5</sup> Alternative (LEDPA). The Guidelines identify that, “no discharge of dredged or fill material shall be permitted if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences.”<sup>6</sup> Identification of the LEDPA is achieved by performing an alternatives analysis that includes an evaluation of the direct, secondary (indirect), and cumulative impacts to jurisdictional waters resulting from each alternative considered. The Guidelines recognize that the alternatives analysis developed under the National Environmental Policy Act (NEPA) may provide the information needed to evaluate alternatives under the Guidelines. The Guidelines acknowledge that there may be instances where “NEPA documents may address a broader range of alternatives than required to be considered under this paragraph or may not have considered the alternatives in sufficient detail to respond to the requirements of these Guidelines. In the latter case, it may be necessary to supplement these NEPA documents with this additional information.”<sup>7</sup>

---

<sup>3</sup> 40 C.F.R. § 230.12(a).

<sup>4</sup> 40 C.F.R. § 230.11.

<sup>5</sup> According to the Guidelines, an alternative is practicable if it is available and capable of being done after taking into consideration cost, existing technology, and logistics in light of the overall project purposes. (40 CFR 230.10(a)(2)).

<sup>6</sup> 40 C.F.R. § 230.10(a).

<sup>7</sup> 40 C.F.R. § 230.10(a)(4).

1. **Alternatives:** **Ex. 5 Deliberative Process (DP)**

The 2020 FSEIS evaluates a no-action alternative and a structural alternative with non-structural features (the Proposed Plan/Plan 5). Consistent with the 2007 FSEIS, the Proposed Plan continues to involve a pumping station with a capacity of 14,000 cfs and a pump-on elevation of 87 feet NGVD. In the current project proposal, the pumping station will be located at the Deer Creek site, which is approximately 7.5 miles northeast of the Steele Bayou Site proposed in the 2007 FSEIS. The non-structural component also continues to include acquisition and reforestation of agricultural lands from willing sellers. According to the 2020 FSEIS, it does not reformulate new alternatives or reexamine any of the alternatives previously considered.

Recommendation:

- EPA recommends that **Ex. 5 Deliberative Process (DP)**

**Ex. 5 Deliberative Process (DP)**

- Given the new data and analysis that the USACE has included in the 2020 FSEIS to estimate impacts, changes that have occurred in the costs of project alternatives since estimates were completed for the 2007 FSEIS, changed circumstances in the study area since preparation of the 2007 FSEIS (e.g., changes in land ownership patterns and the number and type of structures potentially affected by the proposed project), and advancements in nonstructural approaches to flood damage reduction, we recommend

**Ex. 5 Deliberative Process (DP)**

**Ex. 5 Deliberative Process (DP)**

An accurate alternatives

analysis is essential for identification of the LEDPA.

- Ex. 5 Deliberative Process (DP)**

**Ex. 5 Deliberative Process (DP)**

According to the 2020 FSEIS, direct impacts to wetlands and other waters are more than four times larger at the new site (see Wetlands discussion below), secondary impacts to wetlands are expected to be similar at both sites, and some project related impacts at the old site have been completed since the 1980s.

B. Section 230.10(b) – Compliance with Other Environmental Standards

The Guidelines prohibit discharges that would violate a number of environmental standards; of particular relevance here, a discharge is prohibited if it “[j]eopardizes the continued existence of species listed as endangered or threatened under the Endangered Species Act [ESA]...or results in likelihood of the destruction or adverse modification of...critical habitat...”<sup>8</sup>

1. **ESA Coordination:** The U.S. Fish and Wildlife Service (FWS) has reviewed the USACE’s biological assessment (BA) on the effects of the updated Yazoo Pumps Project on the federally listed plant pondberry (*Lindera melissifolia*). In a December 8, 2020 letter to the USACE, FWS stated that it does not concur with the USACE’s determination that the project may affect, but is not likely to adversely affect pondberry. Instead, FWS finds that the BA, as submitted, provides

<sup>8</sup> 40 C.F.R. § 230.10(b).

“an insufficient analysis of the project and its effects, which prevents an adequate review of pondberry.” In its letter, FWS identifies additional information and analysis that the USACE should incorporate into a revised BA to ensure that the proposed project “is not likely to jeopardize the continued existence of pondberry.” The 2020 FSEIS states that the “analysis does not include impacts to the pondberry” and “[a]n effects determination cannot be made at this time due to limited data availability.” The 2020 FSEIS indicates “ESA coordination on the pondberry is ongoing and the Record of Decision would not be signed until coordination is complete.”

Recommendation:

- EPA recommends the final Section 404(b)(1) Evaluation and the ROD include Ex. 5 Deliberative Process (DP)

## Ex. 5 Deliberative Process (DP)

### C. Section 230.10(c) – Evaluation of Significant Degradation

The Guidelines prohibit authorization of a proposed discharge that causes or contributes to significant degradation of the aquatic ecosystem.<sup>9</sup> The evaluation of the potential for significant degradation “shall be based upon appropriate factual determinations, evaluations, and tests” as described in 40 C.F.R. § 230.11 after consideration of potential impacts and effects identified in the Guidelines “with special emphasis on the persistence and permanence of the effects.”<sup>10</sup> Of particular importance in this case for determining compliance with the Guidelines is the evaluation of the potential direct, secondary, and cumulative effects of the proposed discharges on wetlands,<sup>11</sup> fish and other aquatic organisms,<sup>12</sup> and water quality.<sup>13</sup>

1. **Wetlands:** As compared to the 2007 FSEIS, the direct impacts to wetlands and other waters associated with construction of the proposed pumping station have increased from 43.6 acres (2007 FSEIS, Appendix 2) to 193.52 acres (2020 FSEIS, Appendix L). According to the 2020 FSEIS, operation of the current proposed pumping station would also result in secondary impacts to approximately 38,774 acres of wetlands in the Yazoo Backwater Area (YBA) from changes in the frequency and duration of flood events experienced by these wetlands.<sup>14</sup> These impacts will degrade the ability of affected wetlands to perform important ecological functions, including habitat support functions for fish and wildlife.

**Ex. 5 Deliberative Process (DP)**

**Ex. 5 Deliberative Process (DP)**

<sup>9</sup> 40 C.F.R. § 230.10(c).

<sup>10</sup> *Id.*

<sup>11</sup> 40 C.F.R. § 230.41.

<sup>12</sup> 40 C.F.R. § 230.31.

<sup>13</sup> 40 C.F.R. § 230.22.

<sup>14</sup> For the purposes of NEPA, these effects are reasonably foreseeable and have a close causal relationship to the proposed action.

## Ex. 5 Deliberative Process (DP)

The interagency field-based Environmental Monitoring and Assessment Program (EMAP) effort determined that there are approximately 216,000 acres of wetlands in the YBA (2007 FSEIS, Main Report) and this estimate has not changed in the 2020 FSEIS. The 2020 FSEIS evaluates potential secondary impacts to 82,774 acres (i.e., 38%) of these wetlands due to the impact analysis being limited to only those wetlands in the 2-year floodplain that currently experience  $\geq 14$  days of inundation from flooding. The 2020 FSEIS assumes that there would be no impacts to wetland functions in the remaining approximately 133,000 acres of wetlands; **Ex. 5 Deliberative Process (DP)** The 2020 FSEIS takes the position that unless flooding is responsible for most or all of a wetland's hydrology then the pumps' changes to flood frequency and duration would not affect the functions performed by that wetland; **Ex. 5 Deliberative Process (DP)**

**Ex. 5 Deliberative Process (DP)**

**Ex. 5 Deliberative Process (DP)**

Also, the 2020 FSEIS appears to **Ex. 5 Deliberative Process (DP)**

## Ex. 5 Deliberative Process (DP)

Further, according to Berkowitz et al. (2019) which is referenced extensively in the 2020 FSEIS, backwater flooding plays a role in wetland hydrology in approximately 32.1% of the wetland locations evaluated in that study. If, as the 2020 FSEIS has suggested, these findings are representative of the wetlands across the YBA, this would mean that approximately 69,336 acres of wetlands in the YBA could be indirectly impacted by the pumps project. This is substantively greater than the 38,774 acres of estimated secondary wetland impacts in the 2020 FSEIS.<sup>16</sup> This suggests that **Ex. 5 Deliberative Process (DP)**

## Ex. 5 Deliberative Process (DP)

### Recommendation:

Based on the above assessment, EPA recommends that the USACE incorporate the following information in the ROD and final 404(b)(1) Evaluation:

<sup>15</sup> In its 2008 CWA Section 404(c) Final Determination regarding the Yazoo Pumps Project, EPA determined that impacts to between 28,400 and 118,400 acres of wetlands would result in unacceptable adverse effects on fishery areas and wildlife and this determination has not been modified. The 2008 Final Determination is available at: [https://www.epa.gov/sites/production/files/2015-05/documents/yazoo-final-determination\\_signed\\_8-31-08.pdf](https://www.epa.gov/sites/production/files/2015-05/documents/yazoo-final-determination_signed_8-31-08.pdf).

<sup>16</sup> This is also greater than the 67,000 acres of secondary wetland impacts estimated for Plan 5 (i.e., the proposed plan) in the 2007 FSEIS.

## Ex. 5 Deliberative Process (DP)

2. **Fish and Other Aquatic Organisms:** Data collected in the YBA from 1990 through 2019 indicates “[o]verall, a diverse assemblage of larval and early juvenile life stages of fish are found in the lower Big Sunflower-Steele Bayou drainage and many are dependent on inundated floodplains for successful spawning and rearing.”<sup>17</sup> As part of evaluating the project’s likely impacts on fish and other aquatic organisms, the 2020 FSEIS estimates impacts on fish spawning and rearing habitat (Appendix F-8). For this analysis, the 2020 FSEIS states that the “acreage analysis area was constrained to lands within the 2-year flood frequency and the spawning and rearing season was defined as 1 March – 30 June.” The following criteria were applied to further constrain the assessment areas used to evaluate impacts to spawning habitat and rearing habitat:
  - Spawning acres were restricted to a minimum depth of one foot, maximum depth of 10 feet, and restricted to lands flooded for a minimum duration of 8 consecutive days.
  - Rearing acres were calculated for water depths of 0.1 - 20 feet with a flooding minimum duration of 1 day.

We are concerned that

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

<sup>17</sup> This finding was identified in the 2020 DSEIS (Appendix F-8) but was inexplicably removed from the 2020 FSEIS.

## Ex. 5 Deliberative Process (DP)

The output of the fish habitat impact assessment is an estimate of lost Average Annual Habitat Units (AAHUs). The 2020 FSEIS indicates that due to hypoxia the value of the lost spawning and rearing habitat should be devalued. A weighting factor of 0.6 is applied that reduces the lost spawning AAHUs from 2,828 to 1,703 and the lost rearing AAHUs from 3,232 to 1,939. This in turn reduces the required compensation acreage to 2,399 to address spawning losses and 2,732 to address rearing losses. No information is provided indicating that use of such a weighing factor is standard practice or is justified in this case.

### Recommendation:

Based on the above assessment, EPA recommends the ROD and final 404(b)(1) Evaluation:

- 
- 
- 

## Ex. 5 Deliberative Process (DP)

3. **Water Quality:** The 2020 FSEIS includes a large amount of baseline water quality data from the Yazoo River Basin. Analysis of this water quality data focuses on current trends in low dissolved oxygen and high nutrient concentrations observed in the main stems of Steele Bayou and Big Sunflower Basins. This data has raised concerns regarding the degradation of water quality in the YBA. Previously, USACE recommended reforestation of up to 40,000 acres and maintaining higher minimum ponding levels of up to 3 feet behind the flood gates during low flow periods to address these water quality issues and provide benefits to fish and other aquatic organisms. However, portions of the 2020 FSEIS (Appendix F-8) now indicate that reforestation

is not likely to improve water quality in ways that would improve support for fish and other aquatic organisms while other portions continue to indicate that wetland reforestation/restoration will “provide significant long-term benefits to water quality” (see Appendix L). The 2020 FSEIS also now indicates that maintaining higher ponding levels would be detrimental to fish and other aquatic organisms because of concerns regarding low dissolved oxygen. Statements about the water quality effects of reforestation and minimum ponding levels appear to

**Ex. 5 Deliberative Process (DP)** The 2020 FSEIS also makes  
 conflicting statements regarding whether **Ex. 5 Deliberative Process (DP)**

## Ex. 5 Deliberative Process (DP)

In addition, the USACE has observed declining river low flow stages, in the late summer or early autumn, over the last 90 years in the Yazoo Basin. According to the USACE, these reduced stages result from the completion of flood control projects and agricultural practices. USACE indicates that healthy baseline water quality standards cannot be maintained without adequate year-round flow in the aquatic systems. In response, the 2020 FSEIS proposes a series of groundwater wells along the Mainline Levee to supply water to streams in the YBA during low flow periods (see discussion in Mitigation section below). While the 2020 FSEIS includes qualitative statements indicating that the proposed wells will improve flow, water quality, and biological conditions, as discussed in the Mitigation section below,

**Ex. 5 Deliberative Process (DP)** Furthermore, it is also unclear whether

## Ex. 5 Deliberative Process (DP)

### Recommendation:

Based on the above assessment and the USACE’s multiple shifting and conflicting qualitative statements regarding water quality, EPA recommends that the USACE incorporate the following information in the ROD and final 404(b)(1) Evaluation:

- **Ex. 5 Deliberative Process (DP)**

4. **Cumulative and Secondary Effects:** Cumulative effects are the changes in an aquatic ecosystem that are attributable to the collective effect of a number of individual discharges of dredged or fill material; although the impact of a particular discharge may constitute a minor change in itself, “the cumulative effect of numerous such piecemeal changes can result in a major impairment of the water resources and interfere with the productivity and water quality of existing aquatic ecosystems.”<sup>18</sup> Secondary effects are effects on an aquatic ecosystem that are

<sup>18</sup> 40 C.F.R. § 230.11(g).

associated with a discharge of dredged or fill materials, but do not result from the actual placement of the dredged or fill material.<sup>19</sup>

Recommendation:

EPA recommends that the USACE incorporate the following information in the ROD and final 404(b)(1) Evaluation:

- - 
  -
- Ex. 5 Deliberative Process (DP)

---

<sup>19</sup> 40 C.F.R. § 230.11(h).

<sup>20</sup> This analysis entitled “Impacts of Yazoo Backwater Pump to Downstream Stages” is available at:  
<https://www.mvk.usace.army.mil/Portals/58/docs/PP/YazooBackwaterReport/YBW%20Pump%20Downstream%20Impacts%2019Dec2019.pdf>.

## Ex. 5 Deliberative Process (DP)

### D. Section 230.10(d) – Evaluation of Minimization and Compensation Measures

The Guidelines prohibit discharges that do not include all appropriate and practicable measures to minimize potential harm to the aquatic ecosystem.<sup>21</sup> This requirement includes appropriate and practicable compensatory mitigation to offset unavoidable environmental impacts associated with discharges permitted under CWA Section 404.<sup>22</sup>

**1. Compensatory Mitigation:** The Guidelines require appropriate and practicable compensatory mitigation to offset unavoidable impacts to waters of the U.S. and require that mitigation plans, such as the plan proposed in the 2020 FSEIS, be based on actual proposed mitigation sites. The USACE should provide a mitigation plan that is as detailed and specific as would be required by a private party applying to the USACE for a Section 404 permit.<sup>23</sup> As discussed below, the compensatory mitigation plan described in the 2020 FSEIS includes

#### Ex. 5 Deliberative Process (DP)

The compensatory mitigation plan proposed in the 2020 FSEIS<sup>24</sup> includes two components:<sup>25</sup>

- 1) Reforestation/restoration of 2,405 acres of agricultural lands to wetlands to offset approximately 38,774 acres of wetland impacts as well as impacts to terrestrial resources, wildlife, waterfowl, and a portion of the impacts to fish and other aquatic organisms; and
- 2) Installation of up to 34 wells to irrigate streams during low-flow periods to offset the remaining impacts to fish and other aquatic organisms.

According to the 2020 FSEIS, specific compensation sites for reforestation have not been identified. The proposal relies on the ability to secure sites in the future from willing landowners in locations where flood frequency and duration will be unaffected by the pumps project. There is also uncertainty regarding

#### Ex. 5 Deliberative Process (DP)

#### Ex. 5 Deliberative Process (DP)

Due to the lack of site-specific mitigation plans,

#### Ex. 5 Deliberative Process (DP)

#### Ex. 5 Deliberative Process (DP)

As the potential

<sup>21</sup> 40 C.F.R. §§ 230.10(d); 230.12(a)(3)(iii).

<sup>22</sup> 40 C.F.R. § 230.12(a).

<sup>23</sup> Pursuant to Section 2036 of the Water Resources Development Act (WRDA) of 2007, “the Secretary shall ensure that the mitigation plan for each water resources project complies with the mitigation standards and policies established pursuant to the regulatory programs administered by the Secretary.” 33 U.S.C. § 2283(d)(3)(A). The ROD should also describe how the proposed compensatory mitigation for the pumps project is consistent with the other requirements of Section 2036, including those related to mitigation site identification, acquisition, monitoring, and contingency planning. 33 U.S.C. § 2283(d)(3)-(5).

<sup>24</sup> There are still 1,490 acres of reforestation yet to be acquired to offset the impacts of other past discharges (2020 FSEIS, Main Report).

<sup>25</sup> As discussed above, these mitigation requirements appear to be based on an incomplete assessment of likely impacts. Mitigation requirements should be based upon the full scope of likely impacts, to include any changes resulting from the analyses requested above.

<sup>26</sup> Some portions of the 2020 FSEIS (e.g., Appendix L) state that “no more than” 34 wells will be installed, so the actual number of proposed wells is unclear. The 2020 FSEIS also notes that there is “uncertainty associated with the availability of land for the identified well field sites from willing landowners” (Appendix L), thus detailed plans have not yet been developed.

benefits of these mitigation measures have

Ex. 5 Deliberative Process (DP)

### Ex. 5 Deliberative Process (DP)

Regarding the proposed reforestation, the Guidelines require that mitigation plans be based on actual mitigation sites.<sup>27</sup> The projected benefits of the reforestation are based largely on assumptions about the location and condition of unidentified mitigation sites (e.g., the 2020 FSEIS does not include data and information based on an HGM assessment of specific proposed compensation sites to support estimation of benefits). The proposed reforestation also does not ensure that specific functions will be adequately replaced because all functions are lumped together in the Average Annual Functional Capacity Unit calculation and hydrologic source and periodicity are uncertain. The 2020 FSEIS indicates that reforestation would not effectively offset impacts to fish and other aquatic organisms. Other areas of concern associated with the proposed reforestation are its reliance on land acquired via purchase from willing landowners. The plan also does not demonstrate that

Ex. 5 Deliberative Process (DP)

### Ex. 5 Deliberative Process (DP)

The 2020 FSEIS also includes a conceptual proposal to install wells along the Mainline Levee inside the YBA to irrigate streams in the YBA during low-flow periods. According to the 2020 FSEIS, this effort would be designed to address declining river stages observed over the last 90 years in the Yazoo Basin due to the completion of flood control projects and agricultural practices. There are no mechanisms identified in the 2020 FSEIS to ensure that any water from the wells is not also diverted for agricultural or other purposes.<sup>29</sup> The 2020 FSEIS raises questions regarding

Ex. 5 Deliberative Process (DP)

## Ex. 5 Deliberative Process (DP)

The 2020 FSEIS also raises concerns that

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

suggesting that Ex. 5 Deliberative Process (DP) Similarly, neither of the two pilot efforts described in the 2020 FSEIS include

Ex. 5 Deliberative Process (DP)

## Ex. 5 Deliberative Process (DP)

<sup>27</sup> Mitigation standards for the regulatory program do not allow such mitigation plans to be based on hypothetical mitigation sites; this is not permitted in the CWA Section 404 Regulatory Program (40 C.F.R. § 230.91 – § 230.98).

<sup>28</sup> The non-structural component of the proposed project also includes reforestation/restoration of “up to” 2,700 acres of agricultural lands to wetlands below 87 feet NGVD. However, the benefits of this reforestation

Ex. 5 Deliberative Process (DP)

## Ex. 5 Deliberative Process (DP)

<sup>29</sup> Although the 2020 FSEIS states “the supplemental flow delivered to the streams should not be viewed as a water source for irrigation (via surface water) to nearby farming operations,” information in 2020 FSEIS (Appendix F-8) suggests that fish would need the supplemental water during times that overlap with farm irrigation needs suggesting likely conflicts that have not been addressed given the highly conceptual nature of this mitigation proposal.

strongly recommends against the use of highly engineered compensatory mitigation projects such as the proposed wells noting that such projects raise concerns regarding their sustainability in part because of the need for significant levels of perpetual operation and maintenance (NRC, 2001).

Recommendation:

Based on the above assessment, EPA recommends that the USACE incorporate the following information in the ROD and final 404(b)(1) Evaluation:

- 
- 
- 
- 
- 
- 
- 
- 

## Ex. 5 Deliberative Process (DP)

**2. Monitoring and Adaptive Management:** Sections 2031, 2036(a), and 2039 of WRDA 2007 require the USACE to develop a monitoring and adaptive management plan for its restoration

---

<sup>30</sup> 40 C.F.R. § 230.94(c).

<sup>31</sup> 73 FR 19601 (Preamble to the 2008 Mitigation Rule).

activities<sup>32</sup> and this complements requirements in the Guidelines.<sup>33</sup> The 2020 FSEIS describes an approach to monitoring various resources in the YBA (Appendix K); however, it remains unclear whether:

Ex. 5 Deliberative Process (DP)

## Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

In particular, it is not clear how

Ex. 5 Deliberative Process (DP)

## Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

The 2020 FSEIS also contains conflicting monitoring and adaptive management information for wetlands between

Ex. 5 Deliberative Process (DP)

## Ex. 5 Deliberative Process (DP)

### Recommendation:

Based on the above assessment, EPA recommends that the USACE incorporate the following information in the ROD and final 404(b)(1) Evaluation:

- 

- 

- 

- 

- 

## Ex. 5 Deliberative Process (DP)

<sup>32</sup> 42 U.S.C § 1962-3; 33 U.S.C. § 2283(d); 33 U.S.C. § 2330a.

<sup>33</sup> 40 C.F.R. § 230.91 – § 230.98.

- **Ex. 5 Deliberative Process (DP)**

## II. Other Issues

A. **Environmental Justice (EJ)**: EPA recognizes the importance of flood risk reduction for vulnerable communities, and the 2020 FSEIS indicates that the YBA has a high minority and low-income population. The EJ analysis (2020 FSEIS Main Report and Appendix F-1) suggests that EJ communities are expected to benefit from reduced damages to agricultural crops. The 2020 FSEIS appears to attribute all the benefits from reduced flood loss and reduced agricultural crop loss to low-income and minority populations. This may

**Ex. 5 Deliberative Process (DP)**

**Ex. 5 Deliberative Process (DP)** The 2020 FSEIS also suggests that operating 34 groundwater wells will result in more subsistence fishing and hunting opportunities. However, as discussed above (see Wetlands, Fish and other Aquatic Organisms, Water Quality, and Compensatory Mitigation discussions)

## **Ex. 5 Deliberative Process (DP)**

### Recommendation:

EPA recommends the EJ analysis clarify information regarding project benefits and impacts in the ROD.

- **Ex. 5 Deliberative Process (DP)**

Message

---

**From:** Morgan, Ruthw [morgan.ruthw@epa.gov]  
**Sent:** 1/15/2021 10:07:53 PM  
**Subject:** Administrator's Weekly Report for the week ending January 15, 2021.  
**Attachments:** Administrator Weekly 011421.pdf; Administrator Weekly 011421.docx

Good afternoon Administrator Wheeler and colleagues,

Attached please find the **Administrator's Weekly Report** (in both PDF and Word), which includes programs and regional office updates for the week ending January 15, 2021.

Sincerely,  
Ruth

**Ruthw Morgan, Special Assistant**  
**Office of the Administrator**  
**U.S. Environmental Protection Agency**  
**1200 Pennsylvania Ave., NW**  
**Washington, DC 20460**  
**(202) 564-1326**  
[Morgan.Ruthw@epa.gov](mailto:Morgan.Ruthw@epa.gov)

**Region 1**Hot Topics**Region 1 Finalizes Consent Agreement with Cashman Dredging and Marine Contracting Co., LLC**

On January 12, R1 finalized a consent agreement resolving claims against Cashman Dredging & Marine Contracting Co., LLC of Quincy, MA for alleged violations of the Marine Protection, Research, and Sanctuaries Act (Ocean Dumping Act) that occurred during the disposal of material dredged from New Bedford Harbor at a location outside an authorized disposal site on one occasion, and in the wrong locations within the authorized disposal site on three other occasions. Under the terms of the settlement, the company agrees to pay a \$185,000 penalty.

**U.S. Files Motion to Enter Clean Air Act Consent Decree in U.S. v. Sprague Resources L.P.**

On January 8, the United States filed a motion with the U.S. District Court in Boston, MA asking the Court to approve a proposed consent decree with Sprague Resources L.P. This will bring Sprague into compliance with federal and state air pollution control laws that regulate the emissions of volatile organic compounds from heated #6 oil and asphalt tanks. The consent decree requires Sprague to apply for revised state air permits which will limit the amount of #6 oil and asphalt the company can pass through the facilities and limit the number of tanks that can store #6 oil and asphalt at any one time. Sprague facilities which are subject to the consent decree are located in Everett and Quincy, MA, Newington, NH, Providence, RI, and South Portland and Searsport, ME. Sprague will pay a total of \$350,000 in civil penalties - \$205,000 to the U.S. and \$145,000 to the Commonwealth of Massachusetts.

**EPA Signs Maine 176A Petition**

On January 11, the Administrator signed EPA's proposed approval of Maine's petition to opt-out portions of the state from the Ozone Transport Region (OTR). EPA proposes that the portion of the state that Maine is proposing to remove from the OTR will not significantly contribute to attainment of any ozone NAAQS in any area of the current OTR and therefore will no longer be subject to OTR requirements. This action in itself does not relax any current controls.

**R1 and CT DEEP Coordinate on Thames Shipyard Request**

On January 11, R1 met with CT DEEP to discuss the Thames Shipyard request to modify their NESHAP and VOC RACT requirements. In December, R1 sent CT DEEP comments regarding their draft response to the source's request. On the call, R1 answered CT DEEP's follow-up questions and offered support for an upcoming call with the source.

### **South Fork Wind Farm Air Permit Application Deemed Complete**

On January 13, R1 formally determined that the Outer Continental Shelf (OCS) air permit application for the South Fork Wind Farm was complete. The South Fork Wind Farm is a 132 MW offshore wind energy project located off of the coast of Massachusetts with an onshore connection to Long Island, NY. This is the first of parent company Orsted North America's six planned offshore wind projects to apply for coverage under an OCS air permit. EPA plans to issue the draft South Fork Wind Farm permit for public notice in May 2021.

### **R1 Releases Draft Permit for Boston Ship Repair**

On January 12, a draft permit for Boston Ship Repair (MA0040142) was placed on public notice. The discharge to the Boston Inner Harbor consists of stormwater, groundwater infiltration, and seawater. Public notice will end on February 10.

### **R1 Meets with Citizens Regarding PFAS Investigation at Pease Air Force Base**

Over the last two weeks, R1, Air Force and NHDES hosted several technical workshops with citizens to discuss scoping efforts for an upcoming PFAS Remedial Investigation at the Pease Air Force Base in New Hampshire. The intent of the workshops was to provide information to and listen to concerns of a limited number of specific citizen leaders outside of the regular Restoration Advisory Board/public meetings.

### **R1 Attends Piscataquis Economic Development Council Annual Meeting**

On January 11, R1 participated in the Piscataquis Economic Development Council's annual meeting. Much of the discussion focused on their successful brownfields revolving loan fund, which helped fund the cleanup at [ HYPERLINK "<https://www.epa.gov/sites/production/files/2020-12/documents/bf-ss-mayo-mill-dover-foxcroft-me.pdf>" ] in the Town of Dover-Foxcroft, ME.

### **R1 Meets with Town of Belfast Brownfields Steering Committee**

On January 13, R1 and Maine DEP staff participated in Belfast's Brownfields Selection Committee meeting. Much of the discussion focused on the town's current community-wide assessment grant. The entire town of Belfast, ME is within an Opportunity Zone, and the town has addressed over 20 sites through their Brownfields program.

### **R1 Meets with New England Pesticide State Lead Agencies (SLAs)**

On January 12, R1 and Mass Department of Agricultural Resources (MDAR) co-hosted a virtual Pesticide Certification and Training meeting with the New England states as part of R1 FIFRA National Program Guidance special project. The states provided updates on their programs and 2021 approaches. During the afternoon session, SLAs and territories from across the nation learned about on-line pesticide exams. MDAR provided the SLA perspective, and associated administrative logistics. R1 had worked with OPP and R2 and R5, the co-sub-lead regions for worker safety, to distribute invitations to this session to EPA headquarters colleagues, SLAs, territories and Pesticide Safety Education Program Coordinators. Approximately 75 participants were on the call.

Upcoming Major Decisions and Events

Nothing to Report.

**Region 2**Hot Topics**Meetings on PR SO2 Nonattainment SIP Development**

On January 13, R2 hosted a second executive-level meeting with representatives from the Puerto Rico government (including the from the office of the new governor who was inaugurated on January 2, and the Department of Natural and Environmental Resources; and the Puerto Rico Electric Power Authority (PREPA). PREPA facilities are understood to be a major source of emissions causing SO2 non-attainment in two areas of PR. We discussed the detailed and ambitious timeline of actions necessary to achieve an approvable SIP by the April 2022 deadline, and thereby avoid the imposition of sanctions. The deadline for attainment is April 2023. We plan to hold another executive-level meeting in approximately four weeks. Meanwhile, technical working meetings started on January 12, and will continue every other week.

**Gordon Smith Dump Site, Shinnecock Indian Nation**

After extensive consultation with the Shinnecock Leadership, EPA has asked the U.S. Department of Justice to advise the District Court that the government's civil enforcement action against the late Gordon Smith, Sr., for unauthorized filling of tidal wetlands on Shinnecock territory is being withdrawn. The request to the court is likely to be submitted within the next two or three weeks. The civil action was initiated at the request of the Shinnecock nation. Mr. Smith died in a 2019 car accident. Working together, EPA and the Nation have developed a plan to remove the illegal fill and restore the wetlands. On January 11, a kickoff meeting was held with the Shinnecock, R2 and our Targeted Brownfield Assessment (TBA) consultant. The purpose of the meeting was to introduce members of the team and to discuss preliminary information concerning the history and usage of the wetlands fill site. Our consultant will perform a desk-top review over the next two weeks as part of the Phase I ESA. Subsequently there will be a site visit, planned for early February (weather permitting). The Shinnecock's TBA grant will be used to focus on the Gordon Smith Dump site; the assessment will help the Shinnecock to develop a plan for restoration, and applications for grants to implement the restoration.

**COVID Related Issues with NYC Pretreatment Program**

On January 11, NYCDEP informed R2 2 that it is currently experiencing COVID-related challenges more severe than the first round in 2020. DEP's office has been significantly impacted by the COVID outbreak,

**Ex. 6 Personal Privacy (PP)**

Ex. 6 Personal Privacy (PP)

DEP suspended field samplings and inspections of industrial users on December 31, 2020; the suspension will likely continue until at least March 2021. Industrial self-monitoring report review and regulatory report preparations are also delayed/limited with very few staff allowed in the office. NYCDEP plans to conduct telephone surveys of industrial users in lieu of in-person visits and continue to draft regulatory reports. NYCDEP is requesting EPA guidance on how to handle the situation. R2 will coordinate with Headquarters to determine with more specificity how much flexibility industrial pretreatment programs have with regard to performing field work during the pandemic. R2 will also reach out to other POTWs to keep apprised of their operational status.

### **Supreme Court Declines to Hear Appeal in Huntress Case**

On January 11, the Supreme Court denied *certiorari* in the case *Huntress v. U.S.*, a Federal Tort Claims Act (FTCA) action originally brought by William Huntress and his company, Acquest Development, LLC. In 2018 the complaint alleged malicious prosecution, intentional infliction of emotional distress, and abuse of process by EPA staff in the government's prosecution of Huntress and his several companies for wetlands violations. In 2019 the District Court (SDNY) granted the government's motion to dismiss the FTCA claim. One of Huntress' companies (Acquest Transit) then pled guilty to criminal contempt and paid a \$500,000 fine for violating a 2009 preliminary injunction (issued by the WDNY court). In granting the government's motion to dismiss, SDNY found it lacked jurisdiction because the alleged misconduct by the EPA falls within the FTCA's discretionary function exception. Significantly, the court also rejected plaintiffs' argument that the standard for CWA jurisdiction was rendered unconstitutionally vague by the Supreme Court's *Rapanos* decision, and found that EPA's assertion of jurisdiction over the wetlands, and its enforcement actions, was proper.

### **Upcoming Major Decisions and Events**

#### **Hoosick Falls Community Participation Working Group Meeting**

The CPWG will meet on January 27. EPA's Office of Research & Development PFAS Innovative Treatment Team will participate in the meeting to discuss information about emissions from the St. Gobain facility in that community and related matters. The CPWG has asked for our draft presentation materials to be shared in advance.

## Region 3

### Hot Topics

#### **Air Plan Approval; Virginia; Revised RACT Permit for Roanoke Electric Steel/Steel Dynamics, Inc.**

EPA is proposing to approve a revision to the Commonwealth of Virginia's state implementation plan (SIP). The proposed revision consists of source specific reasonably available control technology (RACT) limits for Steel Dynamics, Inc. (SDI). The revision was submitted to remove from the SIP requirements that applied to units that no longer exist.

#### **Brownfield Cleanup Complete at Brooke Glass, Wellsburg WV**

On January 5, WVDEP issued a Voluntary Remediation Program Certificate of Completion for the Brooke Glass site in Wellsburg, WV. The Business Development Corporation of the Northern Panhandle (BDC) completed its \$200k Brownfields cleanup grant in September. The site was also the recipient of a Targeted Brownfields Assessment as well as past Remedial Action by EPA Region 3. The Site is located in a mixed-use area consisting of commercial, industrial and residential properties and was primarily used for glass manufacturing, including a decorative process, from 1879 to 2005. The BDC is seeking a potential future tenant or owner and will develop architectural plans for the proposed rehabilitation of the Cold Metal Building. Once the plans are complete, in accordance with the Memorandum of Agreement (MOA) between EPA R3 and the West Virginia State Historic Preservation Officer, the BDC will also incorporate a museum dedicated to glass making as part of the rehabilitation.

#### **EPA, DOJ, and PADEP execute Consent Decree with Chesapeake Appalachia, LLC (PA)**

On December 30, DOJ signed a Consent Decree among EPA, PADEP, and Chesapeake Appalachia LLC (CALLC), a wholly owned subsidiary of Chesapeake Energy, Inc. (CHK). The agreement, which is now fully executed by all parties, addresses CALLC's self-disclosed unauthorized discharges of dredged and fill material into waters of the U.S. without a Clean Water Act Section 404 permit at 76 sites in PA. The executed CD will be filed with the U.S. Bankruptcy Court for the Southern District of Texas, Houston Division, where CHK filed for Chapter 11 reorganization on June 28, 2020. Subject to approval by the bankruptcy court, the CD will be lodged with the U.S. District Court for the Middle District of PA.

#### **Public Conference Call for Shaffer Equipment/Arbuckle Creek Area Superfund Site, Minden, WV**

A public conference call was held on Thursday, January 7, to discuss sampling results from Phase I of the Remedial Investigation at the Shaffer Equipment/Arbuckle Creek Area Superfund Site. The 90-minute call was scheduled as follow up to the recorded presentation and fact sheet covering the sampling results. EPA's Conflict Prevention & Resolution Center facilitated the call, which included an overview of the sampling results and continued sampling plans and an opportunity for attendees to have their questions and concerns addressed. The call was promoted through social media, the site profile page, a site mailing list update, and a postcard mailed to community members. An estimated 11 community members were in attendance. EPA responded to questions about future sampling locations, the amount of time to complete work, and how risk is evaluated under the Superfund program. Participants in the call included representatives from West Virginia DEP and Health Department and ATSDR.

**U.S. Bankruptcy Court Approves Settlement of CERCLA and CAA Stipulated Penalty Claims Against Philadelphia Energy Solutions Refining and Marketing, LLC in The Matter Captioned in Re PES Holdings, LLC, [No. 19-11626]**

On December 23, 2020, the U.S. Bankruptcy Court in Delaware approved the parties' stipulation resolving EPA's claims against Philadelphia Energy Solutions Refining and Marketing, LLC (PESRM) for CERCLA response costs and agreed-upon penalties under a CAA consent decree. R3 incurred CERCLA response costs in responding to a June 21, 2019 equipment failure and a loss of containment at the PESRM's Philadelphia-based refinery that caused a fire and subsequent catastrophic explosion and release of hydrofluoric acid (HF). R3 mobilized at the facility to monitor for the release of HF vapors and to oversee the process of neutralizing the HF that remained on-site, so that it could be safely and properly disposed. On July 21, 2019, PESRM and seven affiliated entities filed for bankruptcy protection in the U.S. Bankruptcy Court in Delaware. R3 incurred \$2,589 in CERCLA response costs prior to the petition date and \$75,480 after the petition date. The Stipulation provides that these post-petition response costs be paid, in full, as an administrative expense. In addition, EPA asserted a claim in the amount of \$33,750, representing penalties for PESRM's violation of an existing CAA consent decree. The Stipulation provides that these penalties be fully allowed as a general unsecured claim to be paid in accordance with the plan of reorganization. EPA had previously resolved its claims against PESRM for violations of the CAA's renewable fuel standard program in a June 9, 2020 settlement agreement and consent decree. With the current settlement, EPA's only remaining claim in this matter is its claim for penalties under CAA 113(b) for PESRM's failure to safely operate the Facility, violating CAA 112(r) and its implementing regulations. R3 coordinated with both the Commonwealth of Pennsylvania and the City of Philadelphia prior to entering into the Stipulation.

**Upcoming Major Decisions and Events**

Nothing to Report.

## **Region 4**

### Hot Topics

#### **FL 404 Assumption**

R4 met with all the NHPA consulting parties on January 14, to discuss how EPA considered all comments and recommendations provided on the Programmatic Agreement. R4 also met with the Miccosukee Tribe of Indians of Florida and the Corps on January 11 to discuss the definition of Indian country.

Ethylene Oxide Updates with the Commissioners and State Directors: RA Walker met virtually with the Commissioners from FL, GA, NC, SC, and TN on reviewing the draft emissions inventory for commercial sterilizer facilities. The emissions data will assist EPA in developing rulemaking for EtO.

R4 Superfund Lead Removal sites: RA Walker had a meeting with GAEPD on January 14, and ADEM on January 13, to provide the states with an update on the Westside Lead and 35<sup>th</sup> Avenue Lead Sites, respectively.

#### **Yazoo Backwater Pumps**

On January 12, several environmental groups (American Rivers, Audobon Society, etc.) sued EPA over the Agency's determination that the Yazoo Backward Pumps project proposed by the Corps of Engineers is a new project and not subject to Agency's 2008 veto). R4 is coordinating with OGC and DOJ on next steps.

#### **Agriculture and Yazoo Events – Mississippi**

On January 10 – January 11, RA Walker accompanied the Administrator and COS Gunasekara on a visit to Mississippi (Jackson, Vicksburg and Delta Area). On January 11, a press event with the Administrator was held at the US Army Corps of Engineers Offices in Vicksburg with participation from Senators Wicker and Hyde-Smith, Governor Reeves, USACE Colonel Robert Hilliard, and MS Ag Commissioner Gipson. Another press event was held at the Nutrien Ag Solutions Retail facility in Bolton, MS. The Administrator announced the Pesticide Environmental Stewardship Program grants, and the event was attended by Senator Hyde-Smith, MDEQ Director Wells, MS Ag Commissioner Gipson, and MS Farm Bureau President McCormick. Additionally, RA Walker and the President McCormick signed the Region's first MOU a Farm Bureau.

### Upcoming Major Decisions and Events

Nothing to Report.

## Region 5

### Hot Topics

#### **New \$16 Million Great Lakes Legacy Act Cleanup in Duluth**

Key Message: On January 14, RA Kurt Thiede signed an agreement for a Great Lakes Legacy Act cleanup in the St. Louis River Area of Concern (AOC) on Lake Superior. The project will remediate approximately 45,000 cubic yards of sediment contaminated with PCBs, PAHs, mercury and chromium in an area called “Ponds Behind Erie Pier.” This area contains two backwater ponds surrounded by shallow marsh wetland in Duluth, Minnesota. Minnesota Pollution Control Agency will contribute up to \$5.6 million of the estimated \$16 million project cost.

The cleanup will contribute to the removal of three of the St. Louis River AOC’s seven remaining beneficial use impairments: restrictions on dredging, degradation of benthos, and fish consumption advisories. Work is slated to begin early summer 2021.

#### **100<sup>th</sup> Beneficial Use Impairment Removed from Great Lakes Areas of Concern**

Key Message: On January 14, R5 announced the removal of the 100<sup>th</sup> beneficial use impairment (BUI) from a Great Lakes Area of Concern: the “degradation of aesthetics” BUI from the Black River AOC in Lorain, Ohio. The impairment had been caused by environmental issues dating back decades.

Only ten BUIs were removed before the start of the Great Lakes Restoration Initiative (GLRI) in 2010. Since then, EPA and its many partners accelerated progress at AOCs and removed an additional 90 BUIs at 24 different U.S. AOCs across the Great Lakes. These BUI removals are critically important steps towards ultimately delisting the remaining AOCs and promoting economic revitalization. There are 155 BUIs that still need to be removed.

#### **R5 Provides Training on Incident Command System to Assist in COVID-19 Vaccine Distribution**

Key Message: During the week of December 28, R5 staff provided incident command training to health care staff at the Kalamazoo, Michigan, health department to assist in vaccine distribution. Following the initial week of demonstrations, R5 staff continued to coach and assist health care staff as they have assumed the lead role in all key ICS planning cycle functions.

As of January 5, the department had completed more than 2,000 first and second dose vaccinations. R5 staff will continue to provide assistance during this period of dramatic upscaling in planning, logistics, and scheduling.

### **Revision to Minnesota Taconite FIP for U.S. Steel**

Key Message: On January 11, Administrator Wheeler signed a revision to the federal implementation plan (FIP) for U.S. Steel's taconite plant in Mt. Iron, Minnesota (Minntac). The revision adjusts the best achievable retrofit technology (BART) limits for nitrogen oxides (NO<sub>x</sub>) to reflect the actual level of control achievable at the source. The revised limits are based on significant emissions data gathered since the facility's installation of low NO<sub>x</sub> burners that was not available when the FIP was originally promulgated in 2013. These limits will help to protect visibility and improve air quality in national parks and wilderness areas.

### **Early Results Believe Green Ooze in Franklin, Indiana Came from a Septic Tank**

Key Message: On January 8, If It Was Your Child, a local group concerned with childhood cancers, posted statements on its Facebook page about a mysterious seepage near the Amphenol corrective action site in Franklin, Indiana. Indiana Department of Environmental Management sampled the substance and determined that it was probably septic waste from an old septic tank. The Johnson County Health Department will follow-up. There was some initial media coverage of the seepage.

### **RA Thiede Participates in IDEM's "Morning Show"**

Key Message: On January 12, Regional Administrator Thiede was a special guest on Indiana Department of Environmental Management's internal morning show, "Morning Minutes with Bruno Pigott."

Since IDEM started teleworking because of the pandemic in March, Commissioner Pigott has used Microsoft Teams to host a regular "talk show" to keep staff informed about agency activities and engaged with each other. RA Thiede participated in the program last summer, but IDEM staff requested a return appearance. The conversation focused on recent accomplishments and the importance of partnership in environmental protection.

### **Upcoming Major Decisions and Events**

Nothing to Report.

**Region 6**Hot Topics**COVID-19**

R6 is coordinating closely with state and tribal environmental and public health agencies as well as EPA HQ offices to elevate and address challenges quickly. Dallas Renaissance Tower and Addison Warehouse are in Phase 2. The El Paso Border Office, Houston laboratory, and Tulsa field office are in Phase 1. R6 has had multiple cases of COVID-19.

**Allied Bioscience, Plano, Texas****Ex. 5, 7(a), 7(d)**

**Ex. 5, 7(a), 7(d)** The company has two exemptions: one for use at 27 American Airlines aircraft and airport facilities in Texas, and the other for use at two orthopedic centers in Texas.

**Waste Isolation Pilot Project (WIPP), Carlsbad, New Mexico**

On January 14, or January 17, depending on the weather, the Department of Energy (DOE) is expected to conduct a short term, four hours test restart of the 700-C fan at the WIPP. This test will result in a small amount of radiation being released. EPA's Office of Radiation and Indoor Air sent a letter on January 12, reflecting its review of the material provided by DOE and its understanding that the release will be well within regulatory limits.

**Patrick Bayou Superfund Site, Deer Park, Texas**

During the week of January 11, the USGS will conduct sediment and surface water sampling in the Houston Ship Channel. Samples will be collected from 15 stations at the mouth of Patrick Bayou and upstream/downstream from the confluence with the ship channel. This activity will assist with characterizing the potential nature and extent of contamination from the site.

**City of Corpus Christi, Texas**

On January 11, the unopposed U.S. Motion to Enter the Consent Decree was granted by the Judge in the U.S. District Court for the Southern District of Texas. This case pertains to Clean Water Act violations at six City owned and operated wastewater treatment plants and associated collection systems.

Upcoming Major Decisions and Events

**Oil and Gas Program Authorization, Texas**

On January 19, R6 will make its final determination on the State of Texas application request for Partial NPDES program authorization for Oil and Gas activities. The public comment period ended January 11. Approximately 156 comments were submitted.

## Ex. 5 Deliberative Process (DP)

## Ex. 5 Deliberative Process (DP)

**Lindrith Compressor Station, Jicarilla Apache Tribal Lands, New Mexico**

On January 21, R6 expects to issue the Public Notice on the draft Title V permit renewal. R6 determined the application administratively complete last June. We issued four tribal consultation letters in October. On January 13, R6 received the information requested from the company clarifying operation of some pigging operations at the facility.

## Region 7

### Hot Topics

R7 conducted outreach to elected officials and community stakeholders at the West Lake Landfill Superfund site, Bridgeton, Missouri

Key Message: January 13, the R7 Administrator conducted virtual calls to elected officials and community stakeholders to emphasize R7's commitment to continued progress at the site. Updates on the work on the Operable Unit (OU)1 remedial investigation, OU2 remedial design and OU3 remedial investigation were also delivered.

#### Description:

- R7 is conducting nearly continuous on-site oversight of the OU1, OU2 and OU3 field work, with support from MDNR and USGS.
- OU1 update
  - R7 notified the public that some radiologically impacted material has been found in areas outside the previously identified OU1 boundaries.
  - R7 has requested a plan from the PRPs for additional investigation in these areas in order to complete the design of the landfill cover system.
  - While this additional investigation will extend the duration of the field work necessary for completion of the remedial design, R7 will strive to minimize schedule impacts.
  - Additional work will not delay work already planned and ongoing for the OU1 remedial design and the OU3 remedial investigation.
- OU3 update
  - Installation of new monitoring wells associated with the OU3 remedial investigation begins on January 18.
  - OU3 field investigation will continue into summer 2021.

R7 signs two Memoranda of Understanding with US Forest Service for work in Madison County and Washington County, Missouri

Key Message: R7 and the US Forest Service entered separate Memoranda of Understanding (MOU) to coordinate activities for two Superfund sites in Missouri, effective January 8.

#### Description:

- US Forest Service has delegated authority to perform removal actions under CERCLA on their properties, while R7 has authority for final remedies.
- R7 identified numerous potential mine waste issues on Mark Twain National Forest lands in the Madison County Mines Superfund site in Madison County, Missouri; and the Furnace Creek Superfund site in Washington County, Missouri.
- US Forest Service and R7 executed MOUs for each site in order to coordinate ongoing removal action and remedial activities that involve both federal entities at each site.

R7 completes Federal Mine Tailings Superfund Site Removal Action, Park Hill, Missouri

Key Message: On December 30, 2020, Doe Run completed the final task of construction for the Removal Action at the Federal Mine Tailings site, Park Hill, Missouri.

Description:

- EPA and the respondents (Doe Run and MDNR-DSP) will perform an inspection in the spring of 2021. If issues with the removal action outcomes are noted, the respondents must address these issues before R7 and MDNR Hazardous Waste Program approve the completion of the Removal Action.
- Remaining tasks upon completion include the submission of the Removal Action Report and the Post-Removal Site Control Plan.

R7 Issued Stop Sale Orders for unregistered product: *Outlaw Germ Justice Disinfectant Wipes*

Key Message: R7 has ordered MJB Worldwide LLC and Hy-Vee Inc. to stop the sale and distribution of disinfectant wipes that EPA has determined are noncompliant with federal law and may represent a danger to consumers. R7 issued a press release for widespread distribution, including the following media outlets: KCTV, Ch. 5; KRMS Radio; WIBW-TV; KOAM-TV; and KLIN Radio.

Upcoming Major Decisions and Events

Nothing to Report.

**Region 8**Hot Topics**Thunder Butte Petroleum Services crude oil storage tank project**

On January 11, Thunder Butte Petroleum Services and R8 met about the proposed addition of six new storage tanks at the Thunder Butte Petroleum Services facility on the Fort Berthold Indian Reservation. The project would remove the ability to load crude oil from storage tanks into trucks and would require all exiting crude oil to leave the facility by pipeline. Project emissions are expected to be reduced and the new facility would be expected to meet minor source requirements.

**Schriever Air Force Base – Colorado Clean Air Act Title V Proposed Permit**

The Air Force has indicated they would like to forego permit limits in CAA title V permits for operation of emergency use engines. This is inconsistent with Colorado Department of Public Health and Environment's (CDPHE) interpretation of its regulations. Without an arrangement to accommodate unlimited operation of emergency use engines, the Air Force indicated they may submit a petition to the EPA to object to the title V permit for Schriever Air Force Base and/or involve political officials to advocate to the EPA for their position. Under EPA's regulations engines at major sources used during emergencies do not have to meet any emission standards. CDPHE suggested that the Air Force submit a rule change request to address the military's concerns. The Air Force has stated that a request has been prepared, but it has not yet been submitted.

**Water Infrastructure Finance and Innovation Act (WIFIA) Loan Program Invites Provo and Englewood to Apply for Funding**

On January 12, two R8 projects were invited to be a part of WIFIA's loan program with the aim to accelerate investment in the nation's water infrastructure by providing long-term, low-cost supplemental credit assistance significant projects. The Provo Aquifer, Storage, and Recovery Program (\$34M) will design and construct aquifer storage and recharge projects to create a sustainable water supply for Provo City. The Englewood One Water Modernization Program, (\$45M) will modernize drinking water and wastewater treatment and conveyance processes, replace outdated electrical and control systems, expedite the replacement of lead pipe, modernize antiquated metering processes, establish a wastewater pilot and research center, initiate a water reuse project, and construct new operations complexes. This initial invitation begins a several month process of project review and negotiation before receiving EPA Administrator and OMB approval to close the loan.

Upcoming Major Decisions and Events

**January 20** Acting Regional Administrator will meet with the Interim Executive Director of the Utah Department of Environmental Quality.

## **Region 9**

### Hot Topics

#### **Abandoned Mine Response and Construction Services Contracts**

We awarded contracts totaling nearly \$220M for cleanup of abandoned uranium mines, following outreach to the Navajo Nation.

#### **R9 Settles Action Against Par Hawaii Refining, LLC for Violations of RCRA**

We filed a Consent Agreement and Final Order resolving an administrative penalty action against Par Hawaii Refining, LLC for alleged violations under the Resource Conservation and Recovery Act at Respondent's facility in Kapolei, Hawaii. The respondent will pay a civil penalty of \$96,177 to resolve alleged violations that they failed to comply with labeling requirements for used oil containers, requirements for adequate aisle space, hazardous waste determination and storage requirements, and permit requirements for storage, treatment, and disposal of hazardous waste.

#### **Virtual Tabletop exercise with Coconino County, Arizona**

We conducted a virtual tabletop exercise with Coconino County, Arizona to test unified command capabilities in partnership with the Ammonia Safety Training Institute. The scenario involved a transportation incident where a tanker truck released hazardous materials in a heavily trafficked area with multiple jurisdictions involved.

#### **Edwards Air Force Base**

The Senior Executive Committee confirmed the resolution of all the Operable Unit 4/9 Arroyos Record of Decision dispute items and discussed potential path forward to document the dispute resolution in a CERCLA decision document. The Air Force will draft a Joint Dispute Resolution Statement that will provide general ROD modification requirements to resolve the dispute items. The Dispute Resolution Committee will explore documentation options to implement these required modifications.

#### **Pacific Islands Region Federal Agency Partners Meeting**

We hosted a virtual meeting of Pacific Islands Region federal representatives to discuss NEPA coordination, Endangered Species Act/Essential Fish Habitat consultations, new Clean Water Act rules, coral reef assessment tools, and action items from the annual Pacific Islands Senior Leadership Forum held last summer. Attendees included representatives from NOAA-NMFS, USFWS, Navy, Corps of Engineers, Marine Forces Pacific, and US Coast Guard.

### Upcoming Major Decisions and Events

#### **Federal Green Challenge Innovation Award**

We will present the Federal Green Challenge Regional Award for Innovation to the R5 Forest Service Greening Fire Team at a virtual event on January 21. The Forest Service incorporated sustainability practices while dealing with wildfire management and recovery challenges this past fire season. The team's achievements include establishing a public-facing website, a webinar series, and an Ambassador Program to increase awareness of the mission and development and implementation of a blanket purchase agreement for on-site incident recycling spanning four Geographic Area Coordination Centers covering Arizona, California, New Mexico, Oregon, and Washington

**Region 10**Hot Topics**Additional Public Notice for Columbia/Snake River Federal Dam NPDES Permits**

By January 15, EPA will announce a 30-day public comment period for NPDES permits for eight federal dams on the Lower Columbia and Snake Rivers. EPA is seeking comment on heat load effluent limits that incorporate wasteload allocation requirements from the Temperature TMDL for the Lower Columbia and Snake Rivers, which EPA issued on May 18, 2020. EPA is also seeking comment on revised wasteload allocations that the U.S. Army Corps of Engineers submitted to EPA during the TMDL public comment period that ended on August 20, 2020.

**Final Settlement Means 100 Percent of Portland Harbor Superfund Site in Remedial Design**

Early the week of January 18, R10 will sign the remaining settlement agreement for remedial design work at the Portland Harbor Superfund Site. With this final RD settlement, 100 percent of this mega site will be in the remedial design phase of cleanup. The region plans to issue a news release announcing this milestone to update the public and stakeholders about the work at the site.

Upcoming Major Decisions and Events**Tribal Concerns re: Hanford 100-BC Area, Richland, WA**

R10 management and staff met with the Yakama Nation to discuss EPA's decision not to re-release the 100-BC Proposed Plan. The Yakama Nation presented uncertainties from the ecological risk assessment. They believe that there are unfilled data gaps and do not support moving forward with any of the alternatives in the Feasibility Study. Their preference would be collecting more ecological risk data before proceeding with a ROD. EPA committed to a response to the Yakama nation within two weeks stating whether or not we plan to proceed forward with the ROD.

**RTOC Monthly Conference Call**

The next R10 Tribal Operations Committee conference will be held January 21. PFAS will be a main focus of the meeting, including a demonstration of a PFAS database provided by OECA and a discussion of PFAS as a priority focus area lead by the National Tribal Toxics Council. R10 will also announce the results of the most recent RTOC election for the two Alaska position for three-year terms.

**Formaldehyde complaints in Springfield, Oregon near Hexion facility**

EPA has received several citizen complaints, including formaldehyde monitoring readings from homes, over the last several weeks near the Hexion manufacturing facility in Springfield, Oregon. Hexion settled with EPA in September 2019 over Toxic Release Inventory violations with a \$60,000 fine. The Lane Regional Air Protection Agency is continuing to investigate but hasn't confirmed odors or other emissions from Hexion.

## Office of Air and Radiation

### Hot Topics

- **Packages for Signature**
  - Arkansas Regional Haze FIP Withdrawal (Phase III)
  - Coyote Station Title V Order
  - Revised Air Quality Designations for the 2015 Ozone National Ambient Air Quality Standards
  - AK Steel Title V Order
- **Packages at OMB for Review**
  - Biogenic CO<sub>2</sub> (Proposed Rule: RECEIVED February 24)
  - 2021 RFS Rule (Proposed Rule: RECEIVED May 13)
  - Primary Copper Smelting NSPS (Proposed Rule: RECEIVED November 25)
  - Guidance for Ozone and Fine Particulate Matter Permit Modeling (Guidance: RECEIVED January 12)
- **Packages Heading to OMB Soon**
  - National Emission Standards for Hazardous Air Pollutants: Primary Copper Smelting Residual Risk and Technology Review and Primary Copper Smelting Area Source Technology Review (Proposed Rule)
  - Addition of 1-Bromopropane to Clean Air Act Section 112 HAP List (ANPR)

### Upcoming Major Decisions and Events

Nothing to Report.

**Office of Chemical Safety and Pollution Prevention**Hot Topics**List N: Disinfectants for Use Against SARS-CoV-2 (COVID-19)**

This week, OCSPP completed the review of testing data against SARS-CoV-2 for 2 products already on List N and 1 product new to List N. The registrants for these products may now list the claim on the products' label. There are now 90 such products on List N that have been tested to be effective against SARS-CoV-2. OCSPP also added 3 additional products to List N, for a total of 525 products.

Upcoming Major Decisions and Events**Fire Ants and Pests of Pets Guidelines**

By January 15, EPA plans to publish a Notice of Availability in the Federal Register that announces the availability of the final test guidelines OSCPP 810.3100: Treatments for Imported Fire Ants and OSCPP 810.3300: The Efficacy of Topically Applied Pet Products Against Certain Invertebrate Pests. These test guidelines provide recommendations for the design and execution of studies to evaluate the performance of pesticide products intended for use against fire ants and invertebrate pests of pests, such as fleas, ticks, and mosquitoes, in connection with registration of pesticide products under the Federal Insecticide, Fungicide, and Rodenticide Act.

**Guidance on Waiving Acute Dermal Toxicity for Pesticide Technical Chemicals**

By January 15, EPA anticipates releasing guidance for waiving dermal toxicity testing for pesticides. The final dermal toxicity guidance will allow for potential use of waivers for acute dermal studies on single active ingredients (i.e., technical chemicals) used to formulate end-use products. EPA's analysis concluded that these studies provide little to no added value in regulatory decision making when an acute oral toxicity study is available. Input EPA received from stakeholders during the 30-day comment period was supportive of this action.

**Office of the Chief Financial Officer**Hot Topics

- The OCFO continues working to prepare the FY 2021 operating plan. The FY 2021 Consolidated Appropriations Act was signed into law on December 27. OCFO has loaded thirty days of funding to cover agency needs until the operating plan is finalized.

Upcoming Major Decisions and Events

- By January 15, the EPA's FY 2020 Annual Performance Report will be published on the agency's website at [ HYPERLINK "https://www.epa.gov/planandbudget/results" ]. As required, the APR includes the Administrator's signed Statement of Reliability and Completeness of EPA's Performance Data.

GAO and OIG Audits and Activities

- The following tables summarize new agency GAO and OIG audits and other related activities since the last report through January 8.

OIG Audits – Week Ending 1/8/2021				
Audit #	Title	Status	Office	Next Steps/Comments
<p><b>Ex. 5 Deliberative Process (DP)</b></p>				

# Ex. 5 Deliberative Process (DP)

GAO Audits – Week Ending 1/8/2021				
Audit Phase	Title	Office	Engagement/ Report No.	Next Steps/Comments
<h2>Ex. 5 Deliberative Process (DP)</h2>				

### Other

- OCFO published the FY 2022-2023 National Program Guidances' early engagement summaries approved by OW, OAR, OECA, OCSPP, OLEM, and OITA leadership on EPA's website at [ HYPERLINK "<https://www.epa.gov/planandbudget/national-program-guidances>" ].
- Starting January 19 through February 4, four webinars and one office hour session will be held on the Federal Employee Paid Leave Act, which went into effect on October 1, 2020. The webinars will provide information on the FEPLA and step-by-step guidance on recording time and/or correcting time and attendance in PeoplePlus using the recently finalized FEPLA time reporting codes. Interested employees may [ HYPERLINK "[https://gcc01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fforms.office.com%2FPages%2FResponsePage.aspx%3Fid%3Ds3iziEhnZ0is-Xaay-ymp2PAm-2X4HtBkcJfkNA89q5UOE1HWU9QWlpQNllaOUpCQVFPNVdFSE5MRS4u&data=04%7C01%7CWeekly\\_Report\\_Group%40epa.gov%7C21b17619d882425f541108d8b956b6a8%7C88b378b367484867acf976aacbeca6a7%7C0%7C0%7C637463129372607264%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTil6Ik1haWwiLCJXVCi6Mn0%3D%7C1000&sdata=R82A8703Ywtjby567DYaYUKFys4sa5ep9Z9c7zb09q4%3D&reserved=0](https://gcc01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fforms.office.com%2FPages%2FResponsePage.aspx%3Fid%3Ds3iziEhnZ0is-Xaay-ymp2PAm-2X4HtBkcJfkNA89q5UOE1HWU9QWlpQNllaOUpCQVFPNVdFSE5MRS4u&data=04%7C01%7CWeekly_Report_Group%40epa.gov%7C21b17619d882425f541108d8b956b6a8%7C88b378b367484867acf976aacbeca6a7%7C0%7C0%7C637463129372607264%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTil6Ik1haWwiLCJXVCi6Mn0%3D%7C1000&sdata=R82A8703Ywtjby567DYaYUKFys4sa5ep9Z9c7zb09q4%3D&reserved=0)" ].

## Office of Congressional and Intergovernmental Relations

### Hot Topics

**January 21 -** U.S. Conference of Mayors will host its 89th Winter Meeting virtually. Mayors  
**January 23** representing cities with populations of 30,000 or greater will convene in sessions throughout the conference to engage with and hear from Federal Agency representatives, Administration officials, and private partners.

### Upcoming Major Decisions and Events

Nothing to Report.

**Office of Enforcement and Compliance Assurance**Hot Topics**OECA Releases its FY2020 Annual Environmental Enforcement Results**

On January 13, OECA published its [ HYPERLINK "https://www.epa.gov/enforcement/enforcement-annual-results-fiscal-year-2020" ]. Highlights of EPA's FY 2020 enforcement and compliance achievements include:

- Commitments to reduce, treat, or eliminate over 426 million pounds of pollution, the most in a single year since 2015.
- Proper treatment, minimization, or disposal of 1.6 billion pounds of hazardous and non-hazardous waste, more than all but two of the past eight years.
- Clean up of 104 million cubic yards of contaminated soil and water, more than in FY 2019.
- Prevention of 18.2 million pounds of air pollutants by preventing, reducing, treating, or eliminating emissions from vehicle and engine air sources through resolution of 31 civil enforcement cases for tampering and aftermarket defeat devices—the most for any one year in the agency's history.
- 247 new criminal cases opened, 77 more than in FY 2019 and the most since 2014.
- Superfund response and cash-out settlements of over \$636 million for cleanup work, \$65 million more than FY 2019, as well as \$178.4 million for EPA's costs.

**OECA Issues TSCA Subpoena to Investigate PFAS Contamination**

On January 14, working in partnership with OCSPP, OECA issued a subpoena under TSCA to find out more information about the fluorination process used to treat HPDE containers for pesticide products that EPA believes is resulting in PFAS contamination. The pesticide manufacturer has voluntarily stopped shipment of any products in fluorinated HPDE containers and is conducting its own testing to confirm EPA results on PFAS contamination. EPA will also continue to work closely with the entities involved and their supply and distribution chains, mosquito control districts, the pesticide and packaging industry, federal partners, states, and tribes that may be affected to provide information and guidance on next steps.

**Compliance Advisory Regarding Products Claiming to Kill or Inactivate SARS-CoV-2**

On January 7, OECA issued an updated Compliance Advisory on what the public needs to know about product making claims to kill the coronavirus causing COVID-19. The Compliance Advisory updates one issued by OECA in May 2020.

**International Forum on Environmental Justice**

On January 14 – January 15, OECA's National Environmental Investigation Center virtually attended the fourth International Forum on Environmental Justice covering national and international environmental law topics and hosted by the Second Environmental Court in Chile.

Upcoming Major Decisions and Events

Nothing to Report.

**Office of General Counsel**

Hot Topics

**Ex. 7(A)**

# Ex. 7(A)

## Upcoming Major Decisions and Events

Nothing to Report.

**Office of International and Tribal Affairs**Hot Topics**Administrator Mission to Costa Rica**

Administrator Wheeler traveled to Costa Rica and held meetings with the Vice Minister for Environment and Vice Minister for Water and Oceans to discuss cooperation under U.S.- Central America and Dominican Republic Free Trade Agreement (CAFTA-DR). The meeting focused on marine litter, including best practices to manage solid waste and illegal gold mining. The Administrator also spoke at a roundtable hosted by the Inter-American Institute for Cooperation on Agriculture (IICA) with private sector representatives to discuss ways to work together to protect the global food supply. The mission included site visits and meetings with the private sector and NGO's to learn more about their actions promoting environmental protection in Costa Rica.

**U.S. National Dialogue on Food Systems**

EPA facilitated the U.S. National Food System Dialogue Breakout Session on Sustainable Environmental Production. The session focused on challenges, drivers, tradeoffs and evidence gaps associated with optimizing environmental resource use in food production, processing and distribution, to reduce biodiversity loss, pollution, water use, soil degradation and GHG emissions. The participants included U.S. representatives from farmers and ranchers, grower associations, academia and NGO's. The dialogue will help inform the USG in the lead up to the UN Food Systems Summit which will be held on September 13, to raise global awareness and global actions to transform food systems to address hunger and reduce diet-related disease.

IHS/EPA Open Dump and Solid Waste Projects – The Indian Health Service (IHS) and EPA held a meeting to discuss an update on the status of the IHS/EPA Open Dump and Solid Waste Projects MOU Action Plan. The action plan has six commitments and the key messages were that:

- IHS has completed a GIS review of the open dump inventory data in the Operation and Maintenance Data System. IHS concluded that data quality improvements are necessary and over the next two months will develop a plan to improve their data.
- A Tribal Waste Assessment Form has been approved and is in use by R9 and R2. Training for further adoption has been postponed due to COVID-19, with tentative reschedule dates in April.
- A third tribal cohort to receive solid waste codes and ordinances training is scheduled for February 2021.

Upcoming Major Decisions and Events

**January 22** Commission for Environmental Cooperation (CEC) Alternate Representatives Meeting will be held virtually.

**January 27 -** The first G7 Senior Environment Officials Meeting will be held virtually.

**January 28**

## Office of the Land and Emergency Management

### Hot Topics

#### **Coal Combustion Residuals (CCR)**

- a. CCR Phase 2 proposed rule (package 1) – On October 15, 2019, the public comment period ended; OLEM is reviewing the comments.
- b. CCR permitting NPRM (package 3) – On July 31, 2020, the reopening notice for this NPRM was published in the Federal Register (FR), and the public comment period ended on August 7, 2020.
- c. CCR Legacy Units ANPRM – On December 14, 2020, EPA extended the comment period by 60 days until February 12.
- d. CCR BU NODA – This was published in the FR on December 22, 2020, and the comment period ends on February 22.

#### **PCB Extraction NPRM**

OLEM is working on the package.

#### **Subpart J Monitoring Final Rule**

On January 4, EPA met with OMB/DHS/USCG to discuss DHS/USCG's comments. OLEM will address concerns and revise the preamble and rule accordingly.

#### **Ongoing major Superfund National Priorities List (NPL) sites**

We are working with R2 on Maywood, Rolling Knolls, and Sherwin-Williams; R5 on Sandoval; R7 on Big River Watershed; and R10 on Portland Harbor, Bradford Island, Stibnite Mine, and East Waterway.

#### **PFAS**

- e. Designation of PFOA/PFOS as CERCLA Hazardous Substances ANPRM – On January 13, OMB concluded its review of the ANPRM. The package is with OP for Administrator signature. FR publication is anticipated on January 19.
- f. National Defense Authorization Act (NDAA) PFAS Waste Destruction and Disposal Interim Guidance – The interim guidance was published for public comment on December 18, 2020. The comment period ends on February 22.

## **Ex. 5 Deliberative Process (DP)**

#### **Put Piles Guidance**

The FR notice will be published on January 19.

Upcoming Major Decisions and Events

**FY21 Environmental Workforce Development and Job Training (EWDJT) Program**

The National Review Panel for FY21 EWDJT applications took place the week of December 15 – December 17, 2020. OLEM anticipates announcing the selection of grantees in February 2021.

**Office of Mission Support**Hot Topics**Inauguration Guidance Reminder**

Most Federal employees in the Washington, DC metropolitan area will have two holidays during the week of January 17: Birthday of Martin Luther King Jr. on Monday, January 18, and Inauguration Day on Wednesday, January 20. Only employees with an official worksite or on official duty in the Inauguration Day area are entitled to the holiday. Additional guidance about both holidays was issued in January 11. [J. HYPERLINK](#)

**Ex. 6 Personal Privacy (PP)**

message.

**Reminder Two New National Honor Awards**

On December 31, 2020, OMS announced the Matthew Leopard Award for Leadership in Environmental Information Management and The Outstanding Contributions to Advancing EPA's Risk Communication Awards were recommended by the NHA Board for inclusion under the Separately Panel award category for 2020 nominations. The new awards have the same due date of January 29, a two-week extension for the new awards only. Please note, all other National Honor Award nominations are still due January 15.

**Temporary Paid Parental Leave Time Reporting Codes are Now Available in PeoplePlus**

On November 4, 2020, OMS and OCFO issued a joint [J. HYPERLINK](#)

**Ex. 6 Personal Privacy (PP)**

**Ex. 6 Personal Privacy (PP)** concerning the interim process for Paid Parental Leave. EPA started with an interim code **Ex. 6 Deliberative Process (DP)** however, temporary codes are now available in PeoplePlus. Effective immediately, employees who are currently eligible to use paid parental leave must now use the time reporting code(s): PDPLA – Adoption; PDPLB – Birth; PDPLF – Foster and discontinue using the interim code **Ex. 6 Deliberative Process (DP)**. The temporary codes may be used retroactively starting October 1, 2020. More information will be shared in an agencywide communication.

Upcoming Major Decisions and Events**Paid Paternal Leave Webinars**

OMS is hosting informational webinars about Paid Paternal Leave. Specific instructions on correcting timecards and leave requests will be discussed in the FEPLA Webinars. Employees are encouraged to sign up using the link below. Webinar information will be posted online once the sessions conclude for employees unable to attend a session.

Event	Date	Time
FEPLA Webinar	January 19	1:00 - 2:00 PM ET
FEPLA Webinar	January 21	1:00 - 2:00 PM ET
FEPLA Webinar	January 26	2:00 - 3:00 PM ET
FEPLA Webinar	January 28	2:00 - 3:00 PM ET
Office Hours (Live Q&A Session)	February 4	1:00 - 2:00 PM ET

# Ex. 6 Personal Privacy (PP)

## Office of Policy

### Upcoming Major Decisions and Events

## Ex. 5 Deliberative Process (DP)

## Ex. 5 Deliberative Process (DP)

### Office of Environmental Justice Webinar for Federally Recognized Tribes

On Tuesday, January 26, the Office of Environmental Justice will present a webinar to Federally Recognized Tribes on EPA's grant award process.

Active Interagency Reviews from OMB		
Subject		OMB Due Date
No Active Interagency Reviews at this time		
Documents Sent to the OFR from January 7 - 13, 2021		
FRL #	Title	Date Sent to FR
10011-04-OAR	Petitions for a Waiver of the 2020 Renewable Fuels Standard, Notice	01-13-2021
10016-26-Region 2	Approval and Promulgation of State Plans for Designated Facilities; New York; Revision to Section 111(d) State Plan for MSW Landfills, NPRM	01-13-2021
10017-00-Region 2	Approval of Source-Specific Air Quality Implementation Plans; New Jersey, Final	01-13-2021
10017-49-OAR	Proposed Information Collection Request; Renewal; EPA's Methane Challenge Program, Notice	01-13-2021

10017-16-Region 10	Air Plan Approval; AK, Fairbanks North Star Borough; 2006 24-hour PM2.5 Serious Area Plan, NPRM	01-13-2021
10018-06-Region 3	Virginia: Final Approval of State Underground Storage Tank Program Revisions, Codification, and Incorporation by Reference, Direct Final	01-13-2021
10018-63-OAR	Proposed Information Collection Request; Comment Request; Mobile Air Conditioner Retrofitting Program (Renewal)	01-13-2021
10018-07-Region 3	Virginia: Final Approval of State Underground Storage Tank Program Revisions, Codification, and Incorporation by Reference, NPRM	01-13-2021
10019-45-Region 6	Air Plan Approval; Texas; Reasonable Further Progress Plan for the Houston-Galveston-Brazoria Ozone Nonattainment Area, Final	01-13-2021
10019-88-Region 4	Air Plan Approval; South Carolina; Update to Materials Incorporated by Reference, Final	01-13-2021
10019-10-OMS	Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Brownfields Program – Accomplishment Reporting (Renewal)/ ICR 2104.08, Notice	01-13-2021
10019-80-OCSP	Final Compliance Guide for Imported Articles Containing Surface Coatings Subject to the Long-Chain Perfluoroalkyl Carboxylate and Perfluoroalkyl Sulfonate Chemical Substances Significant New Use Rule; Notice of Availability, Notice	01-13-2021
10015-85-Region 9	Air Plan Approval; California; San Joaquin Valley Air Pollution Control District; Stationary Source Permits, NPRM	01-12-2021
10016-55-Region 3	Air Plan Approval; Pennsylvania; 1997 8-Hour Ozone NAAQS Second Maintenance Plan for the Johnstown Area, Final	01-12-2021
10016-56-Region 3	Air Plan Approval; Pennsylvania; 1997 8-Hour Ozone National Ambient Air Quality Standard Second Maintenance Plan for the Harrisburg-Lebanon-Carlisle Area, Final	01-12-2021
10016-88-Region 3	40 CFR Air Plan Approval; Virginia; Negative Declarations Certification for the 2008 Ozone National Ambient Air Quality Standard including the 2016 Oil and Natural Gas Control Techniques Guidelines	01-12-2021
10016-80-Region 3	Delegation of Authority to the Commonwealth of Virginia to Implement and Enforce Additional or Revised National Emission Standards for Hazardous Air Pollutants Standards and New Source Performance Standards, Notice	01-12-2021
10016-81-Region 3	Delegation of Authority to the State of West Virginia to Implement and Enforce Additional or Revised National Emission Standards for Hazardous Air Pollutants Standards and New Source Performance Standards, Notice	01-12-2021
10016-86-Region 3	40 CFR Approval and Promulgation of Air Quality Implementation Plans; Delaware; Amendments to Control of Volatile Organic Compounds Mobile Equipment Repair and Refinishing Rule Regulation	01-12-2021
10016-97-Region 3	Air Plan Approval; Pennsylvania; 1997 8-Hour Ozone NAAQS Second Maintenance Plan for the Tioga County Area, NPRM	01-12-2021

10017-11-Region 3	Air Plan Approval; West Virginia; 1997 8-Hour Ozone National Ambient Air Quality Standard Second Maintenance Plan for the West Virginia Portion for the Charleston, West Virginia Area Comprising Kanawha and Putnam Counties, Final	01-12-2021
10017-26-Region 3	Air Plan Approval; Pennsylvania; 1997 8-Hour Ozone National Ambient Air Quality Standards Second Maintenance Plan for the Altoona (Blair County) Area, Final	01-12-2021
10017-32-OCSP	Part 180 Benzovindiflupyr; Pesticide Tolerances, Final	01-12-2021
10017-55-OCSP	Extension of Tolerances for Emergency Exemptions (Multiple Chemicals), Final	01-12-2021
10017-57-OW	Renewal of Information Collection Request (ICR) 0220.14: Clean Water Act 404 State-Assumed Programs, Notice	01-12-2021
10017-12-Region 3	Air Plan Approval; Pennsylvania; 1997 8-Hour Ozone National Ambient Air Quality Standard Second Maintenance Plan for the York-Adams Area, NPRM	01-12-2021
10017-24-Region 3	Air Plan Approval; Pennsylvania; 1997 8-Hour Ozone National Ambient Air Quality Standard Second Maintenance Plan for the Erie Area, NPRM	01-12-2021
10017-25-Region 3	Air Plan Approval; Pennsylvania; 1997 8-Hour Ozone National Ambient Air Quality Standard Second Maintenance Plan for the Clearfield/Indiana Area, NPRM	01-12-2021
10017-48-Region 2	Approval and Promulgation of Implementation Plans; United States Virgin Islands; Regional Haze Federal Implementation Plan; Correction, NPRM	01-12-2021
10018-48-OMS	Proposed Information Collection Request; Comment Request; Cross Media Electronic Reporting Rule (Renewal), Draft	2021-01-12
10018-14-Region 3	Air Plan Approval; Pennsylvania; 1997 8-Hour Ozone NAAQS Second Maintenance Plan for the Scranton-Wilkes-Barre Area, Final	01-12-2021
10018-21-Region 3	Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants; State of Maryland; Control of Emissions from Existing Sewage Sludge Incineration Units, Final	01-12-2021
10018-01-OMS	Environmental Protection Agency Performance Review Board for 2020, Notice	01-12-2021
10018-10-OAR	Ozone Transport Commission Recommendation that EPA Require Daily Limits for Emissions of Nitrogen Oxides from Certain Sources in Pennsylvania, Notice	01-12-2021
10018-41-OW	National Pollutant Discharge Elimination System (NPDES) Pesticide General Permit for Point Source Discharges from the Application of Pesticides, Notice	01-12-2021
10018-47-OCSP	Glyphosate Registration Review; Draft Endangered Species Act Biological Evaluations; Notice of Availability; Extension of Comment Period, Notice	01-12-2021
10018-15-Region 3	Air Plan Approval; Maryland; Negative Declaration for the Oil and Gas Industry, NPRM	01-12-2021

10018-68-Region 3	Air Plan Approval; Pennsylvania; Reasonably Available Control Technology (RACT) Determinations for Case-by-Case Sources under the 2008 8-Hour Ozone National Ambient Air Quality Standards, NPRM	01-12-2021
10018-69-Region 3	Air Plan Approval; West Virginia; 2020 Amendments to West Virginia's Ambient Air Quality Standards, NPRM	01-12-2021
10019-20-Region 4	Air Plan Approval; North Carolina: Revisions to Annual Emissions Reporting	01-12-2021
10019-32-Region 5	Air Plan Approval; Minnesota; Revision to Taconite Federal Implementation Plan, Final	01-12-2021
10019-56-Region 4	Air Plan Approval; North Carolina; Revisions to Construction and Operation Permits, Final	01-12-2021
10019-51-OA	FRN-LGAC-SCAS Request for Nominations, Notice	01-12-2021
10019-44-Region 1	Air Plan Approval; Connecticut; Regulations to Limit Premises-Wide Actual and Potential Emissions from Major Stationary Sources of Air Pollution, NPRM	01-12-2021
10019-50-Region 1	Air Plan Approval; Rhode Island; Control of Volatile Organic Compound Emissions, NPRM	01-12-2021
10012-39-OAR	National Emission Standards for Hazardous Air Pollutants: Municipal Solid Waste Landfills Residual Risk and Technology Review; Correction, NPRM	01-11-2021
10014-63-OAR	Protection of the Stratospheric Ozone: Motor Vehicle Air Conditioning System Servicing, Final	01-11-2021
10016-72-Region 6	Delta Shipyard - Notice of proposed settlement; request for public comment, Notice	01-11-2021
10016-31-Region 6	Air Plan Approval; Texas; Clean Air Act Requirements for Enhanced Vehicle Inspection and Maintenance and Nonattainment New Source Review, NPRM	01-11-2021
10016-38-Region 9	Air Plan Approval; California; Placer County Air Pollution Control District; Open Burning Rules, NPRM	01-11-2021
10016-75-Region 9	Approval of Arizona State Implementation Plan Revisions; Maricopa County Air Quality Department; Stationary Source Permits; New Source Review, NPRM	01-11-2021
10017-52-OCSP	Streptomycin; Pesticide Tolerances, Final	01-11-2021
10017-19-Region 6	Air Plan Approval; Texas; Clean Air Act Requirements for Nonattainment New Source Review and Emission Statements for the 2015 Ozone National Ambient Air Quality Standards, NPRM	01-11-2021
10017-37-Region 6	Approval and Promulgation of Air Quality Implementation Plans; Louisiana; Infrastructure State Implementation Plan Requirements for the National Ambient Air Quality Standards, NPRM	01-11-2021
10017-54-Region 9	Air Quality Implementation Plan; California; Mendocino County Air Quality Management District; Stationary Source Permits, NPRM	01-11-2021
10018-28-Region 6	Air Plan Approval; Arkansas; Infrastructure for the 2015 Ozone National Ambient Air Quality Standards, Final	01-11-2021

10019-21-OAR	Standards of Performance for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984, Final	01-11-2021
10019-25-Region 6	Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants; Arkansas, Louisiana, New Mexico, and Albuquerque-Bernalillo County, New Mexico; Control of Emissions From Existing Hospital/Medical/Infectious Waste Incinerator Units, Final	01-11-2021
10019-11-OAR	Response to Clean Air Act Section 176A Petition from Maine, Notice	01-11-2021
10019-34-Region 9	Air Plan Approval; California; Imperial County Air Pollution Control District, NPRM	01-11-2021
10016-71-Region 4	Air Plan Approval; North Carolina; Revisions to Exclusionary Rules and Permit Exemptions, NPRM	01-08-2021
10018-16-OLEM	Hazardous and Solid Waste Management System: Land Disposal Restrictions; Information for Petitioners Seeking a No-Migration Variance Under the RCRA Land Disposal Restrictions for Temporary Placement of Treated Hazardous Waste within a Permitted Subtitle C Landfill, Draft	01-08-2021
10018-62-Region 4	Air Plan Approval; KY; Gasoline Loading Facilities at Existing Bulk Terminals and New Bulk Plants, NPRM	01-08-2021
10011-06-OCSP	Pesticide Product Performance Data Requirements for Certain Products Claiming Efficacy Against Invertebrate Pests, NPRM	01-07-2021
10014-89-Region 4	South Carolina: Final Approval of State Underground Storage Tank Program Revisions, Codification and Incorporation by Reference, Direct Final	01-07-2021
10014-88-Region 4	South Carolina: Final Approval of State Underground Storage Tank Program Revisions, Codification, and Incorporation by Reference, NPRM	01-07-2021
10017-79-Region 1	Approval and Promulgation of State Plans (Negative Declarations) for Designated Facilities and Pollutants: Maine and Rhode Island, Direct Final	01-07-2021
10017-80-Region 1	Approval and Promulgation of State Plans (Negative Declarations) for Designated Facilities and Pollutants: Maine and Rhode Island, NPRM	01-07-2021
10018-99-Region 1	Air Plan Approval; Massachusetts; Infrastructure State Implementation Plan Requirements for the 2015 Ozone Standard, Final	01-07-2021
10018-02-Region 1	Air Plan Approval; Maine; Infrastructure State Implementation Plan Requirements for the 2015 Ozone Standard and Negative Declaration for the Oil and Gas Industry for the 2008 and 2015 Ozone Standards, NPRM	01-07-2021
10018-49-OAR	National Emission Standards for Hazardous Air Pollutants: Cyanide Chemicals Manufacturing Residual Risk and Technology Review, NPRM	01-07-2021

10019-30-OAR	Pollutant-Specific Significant Contribution Finding for Greenhouse Gas Emissions from New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units, and Process for Determining Significance of Other New Source Performance Standards Source Categories, Final	01-07-2021
10019-39-OCSP	TSCA Section 21 Petition for Rulemaking; Reasons for Agency Response; Denial of Requested Rulemaking, Notice	01-07-2021

## Office of Research and Development

### Hot Topics

#### **Water Researchers Recognized by American Water Works Association (AWWA), *Again!***

AWWA's *Water Science* named an ORD publication in the list of top ten most-read articles for 2019 and now, again in 2020! Lead researchers Jennifer Tully, Mike DeSantis, and Mike Schock co-authored the paper published in 2019, "Water quality–pipe deposit relationships in Midwestern lead pipes." This paper found that less than half of the lead service lines examined contained lead scales that matched model predictions. This information challenged theoretical predictions of the release of lead in drinking water and demonstrated the value of field investigations of pipe materials when making decisions about corrosion control treatment in communities.

### Upcoming Major Decisions and Events

Nothing to Report.

**Office of Water****Hot Topics**

**Multi-Sector General Permit:** This week, EPA is issuing the 2021 National Pollutant Discharge Elimination System Multi-Sector General Permit (MSGP) for stormwater discharges from industrial activity. Once signed by the regions, this final permit will become effective on March 1, and replaces the 2015 MSGP, which expired on June 3, 2020. The 2021 MSGP covers stormwater discharges from industrial facilities in areas where EPA is the NPDES permitting authority and establishes requirements for eligibility, Notice of Intent, effluent limits, inspections, monitoring, and other conditions for 29 sectors of industrial activity.

**Water Infrastructure Reports to Council of Environmental Quality (CEQ)**

This week, the Water Subcabinet submitted a report to CEQ, OMB, and OSTP titled, “Strategy and Recommendations for Modernizing America’s Water Resource Management and Water Infrastructure” as a requirement under Executive Order (EO) 13956. The report provides recommendations in response to several issues across the water sector as highlighted by the EO, including opportunities for federal action and progress moving forward. The report will serve as a foundation and guide for collaboration across federal organizations, as well as with state, local, and other partners.

**Announcement of Final Regulatory Determinations for Contaminants on the Fourth Drinking Water Contaminant Candidate List**

This week, the Administrator signed the *Federal Register* notice titled “Announcement of Final Regulatory Determinations for Contaminants on the Fourth Drinking Water Contaminant Candidate List.” This action completes a key step in EPA’s 2019 PFAS Action Plan to follow the Safe Drinking Water Act process for evaluating drinking water standards for two PFAS – PFOA and PFOS. The notice describes EPA’s final determinations to regulate two contaminants (i.e., PFOA and PFOS) and not to regulate six other contaminants (i.e., 1,1-dichloroethane, acetochlor, methyl bromide (bromomethane), metolachlor, nitrobenzene, and RDX).

**2021 Financial Capability Assessment (FCA) for Clean Water Act (CWA) Obligations**

This week, EPA signed a *Federal Register* notice finalizing the 2021 FCA for CWA Obligations. The 2021 FCA advances the ability of communities to more accurately demonstrate the financial burdens they face and increases the transparency of EPA’s considerations as it endeavors to consistently apply FCA methodologies across the country. EPA’s 2021 FCA guidance includes new metrics that more accurately reflect how much low-income communities can afford to pay for service, which impacts the affordability of capital expenditures and operation and maintenance needed to ensure CWA compliance.

### **Guidance on County of Maui v. Hawaii Wildlife Fund Decision**

EPA signed final guidance that clarifies how the Supreme Court's *County of Maui v. Hawaii Wildlife Fund* decision should be applied under the CWA National Pollutant Discharge Elimination System (NPDES) permit program. This guidance will help clarify when a NPDES permit is necessary under the CWA. This action provides guidance to assist the regulated community and permit authorities with incorporating the Supreme Court's direction in *Maui* into existing CWA NPDES permit programs and authorized state programs.

### Upcoming Major Decisions and Events

Nothing to Report.